

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amended After Comments)

5 907 KAR 20:015[907 KAR 1:640]. Medicaid right to apply and reapply for individuals
6 whose Medicaid eligibility is not based on a modified adjusted gross income eligibility
7 standard or who are not former foster care individuals.

8 RELATES TO: KRS 205.520

9 STATUTORY AUTHORITY: KRS 116.048, 194A.030(2), 194A.050(1), 205.502(3), 42
10 C.F.R. 435.906, 435.907, 435.909, 435.911, 435.912, 42 U.S.C. 1396a, b, d, w-3,
11 1973gg-10[, EO 2004-726]

12 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004,~~
13 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid~~
14 ~~Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~

15 The Cabinet for Health and Family Services has responsibility to administer the Medicaid
16 Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply
17 with any requirement that may be imposed or opportunity presented by federal law to
18 qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's~~
19 ~~indigent citizenry~~]. This administrative regulation establishes the[~~sets forth~~] provisions re-
20 lating to the procedure by which an application for Medicaid coverage is filed, except for
21 individuals for whom a modified adjusted gross income is the Medicaid eligibility income

1 standard or for former foster care individuals between the ages of nineteen (19) and
2 twenty-six (26) years who aged out of foster care while receiving Medicaid coverage. KRS
3 116.048 designates the cabinet to have responsibility for the administration of public as-
4 sistance programs as a voter registration agency in accordance with 42 U.S.C. 1973gg-
5 10. ~~[Therefore,]~~ This administrative regulation establishes the provisions and proce-
6 dures~~[sets forth policy and procedure]~~ necessary to provide an eligible Medicaid recipient
7 the opportunity to register, or to decline from registering, to vote.

8 Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have
9 the opportunity to apply or reapply for Medicaid through the Department for Community
10 Based Services~~[Social Insurance (DSI)]~~.

11 (2) ~~[An individual eligible for TANF, mandatory state supplements, optional state~~
12 ~~supplements, or SSI benefits]~~~~[Aid to Families with Dependent Children (AFDC), State~~
13 ~~Supplementation or Supplemental Security Income (SSI)]~~ **[through the Social Security**
14 **Administration shall be eligible for Medicaid without a separate application.**

15 ~~(3)~~(a) An individual applying on the basis of age, blindness, or disability shall not be
16 eligible as a medically needy individual, under 907 KAR 20:005~~[907 KAR 1:014]~~, if the
17 individual's~~[his]~~ income and resources are within SSI limits.

18 (b) Denial of assistance by the Social Security Administration for SSI for technical rea-
19 sons shall also be considered a denial for Medicaid benefits.

20 Section 2. Application Process. (1) An application shall be considered to have been
21 made:

22 (a)1. When the individual or individual's authorized~~[his]~~ representative has signed, un-
23 der penalty of perjury, the application **[form]** prescribed by the Department for Communi-

ty Based Services~~[DSI]~~ or the Social Security Administration, for SSI benefits~~;~~ and

2. The application has been received ~~[at the appropriate office];~~ or~~[-]~~

(2) ~~[An application shall also be considered to be made]~~ Based on the date of contact with the Department for Community Based Services~~[DSI]~~ or the Social Security Administration for SSI benefits, by a person with a physical or mental impairment who needs special accommodation due to the~~[his]~~ impairment.

(3) If an~~[the]~~ applicant is unable to come to the office to apply, the applicant:

(a) Shall be advised that the applicant may apply via telephone; or

(b)~~[he]~~ May designate an authorized representative to apply for the applicant~~[him]~~ or request a home visit to complete the application process.

(4) An~~[The]~~ applicant may be:

(a) Assisted by an individual of the applicant's~~[his]~~ choice in the application process;

and

(b) ~~[may be]~~ Accompanied by this individual in all contacts with the agency.

(5) Deaf and hard of hearing services shall be provided in accordance with 920 KAR 1:070~~[900 KAR 1:070]~~.

(6) Interpreter services shall be provided for persons who do not speak English, utilizing procedures and forms specified by 920 KAR 1:070~~[900 KAR 1:070]~~.

Section 3. Who May Sign an Application. (1) An application for Medicaid shall be signed by the individual requesting assistance, the relative with whom the child lives if the applicant is a child, or an authorized representative~~[- or an interested party acting on behalf of the applicant]~~.

(2) An application for Medicaid for a child~~[children]~~ in foster care or for a private child

1 caring ~~facility[institution]~~[institutions] shall be signed by the:

2 (a) Representative of the agency to which the child is committed; or

3 ~~(b) Representative of the facility~~[the] ~~[Institution]~~ in which the child is placed.

4 Section 4. ~~[Where Applications are Filed and Processed. (1) An][The] [application:]~~

5 ~~(a)1. May be filed at any Department for Community Based Services][DSI] [office;~~

6 and

7 ~~2. Shall be processed in the county of residence except that any application for~~
8 ~~SSI benefits and Medicaid shall be filed in the service area office of the Social Se-~~
9 ~~curity Administration.~~

10 ~~(2) If an individual is applying for nursing facility or psychiatric facility services,~~
11 ~~the Department for Community Based Services][DSI] [office in the county where the~~
12 ~~facility is located shall take and process the application.~~

13 ~~(3) If an individual is applying in a county other than the county of residence and~~
14 ~~is hospitalized, the Department for Community Based Services][DSI] [office in the~~
15 ~~county of;~~

16 ~~(a) Hospitalization shall take the application and transfer the pending application~~
17 ~~to the county of residence; and~~

18 ~~(b)[, and the DSI office in the county of] [Residence shall process the applica-~~
19 ~~tion using the original application date.~~

20 ~~(4)(a) If an individual is applying in a county other than the county of residence~~
21 ~~and is not hospitalized, the Department for Community Based Services][DSI] [office~~
22 ~~in the receiving county shall;~~

23 ~~1. Partially complete the application;~~

~~2.][,] [Transfer the application to the county of residence on the same day the application is taken; and~~

~~3.][, and] [Explain to the applicant that the application shall be processed in the county of residence.~~

~~(b) The Department for Community Based Services][DSI] [office in the county of residence shall;~~

~~1. Schedule a face-to-face interview; and~~

~~2. Process the application using the original application date.~~

~~(5)(a) If a Kentucky resident is temporarily out of state, a letter from the applicant, an interested party, or an out-of-state agency shall be accepted as the initiation of the application process when;~~

~~1. An emergency arises from accident or sudden illness;~~

~~2.][,] [Care and services are needed immediately;][,] [and~~

~~3. The individual's health would be endangered if the individual][he] [undertook to return to the state.~~

~~(b) Upon notification of the emergency, the official application form shall be forwarded to the initiating party.~~

Section 5.] Action on Applications. (1)(a) A decision shall be made on each Medicaid application within forty-five (45) days, except [that] for an application[applications] requiring a disability determination.

(b) An application requiring a disability determination shall be made within[,] sixty (60) days[shall be allowed].

(2) An exception to the timeframes referenced in subsection (1) of this section shall be

1 made if the~~[Time frame exceptions]~~:

2 (a) ~~[If the]~~ Applicant is cooperating but is unable to obtain necessary verification for an
3 eligibility decision to be made; or

4 (b) ~~[If the]~~ Delay is beyond the control of staff (such as failure or delay on the part of
5 the applicant or examining physician or because of some administrative or other emer-
6 gency that could not be controlled by staff).

7 (3) ~~A~~The case record shall document the cause for the ~~[time standard]~~ delay.

8 (4) Failure to process an application within the ~~[above]~~ time frames referenced in this
9 section~~[frame]~~ shall not be used as the basis for denial.

10 Section ~~5.~~6. Voter Registration. (1) An applicant or recipient ~~[meeting all of the follow-~~
11 ~~ing criteria]~~-shall be provided the opportunity at the local Department for Community
12 Based Services~~[Social Insurance]~~ office to complete an application to register to vote or
13 update the applicant's or recipient's~~[his]~~ current voter registration if the applicant or re-
14 ipient is:

15 (a) ~~[Be]~~ Age eighteen (18) or over;

16 (b) ~~[Be]~~ Present in the office at the time of the interview or when~~[if]~~ a change of ad-
17 dress is reported; and

18 (c) Not ~~[be]~~ registered to vote or not registered to vote at the applicant's or recipi-
19 ent's~~[his]~~ current address.

20 (2) The following individuals shall not be permitted to register to vote by the process
21 established in this administrative regulation:

22 (a) An individual not included in the Medicaid application;

23 (b) A Medicaid payee only;

(c) An authorized representative of a Medicaid recipient; or

(d) An individual acting as a responsible party.

(3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) may~~could~~ be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall:

(a) Remain confidential; and

(b) Be used only for voter registration purposes.

(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.

(6)(a) Completion of the voter registration form is ~~[only]~~ an application to apply to register to vote.

(b) The State Board of Elections shall:

1. Approve or deny the application to register to vote; and

b. Send a confirmation or denial notice to the applicant.

Section ~~6.~~7. Applicability. ~~[(4)]~~ The provisions and requirements of this administrative regulation shall:

~~(1)~~[(a)] Apply to:

~~(a)~~[1.] Children in foster care;

~~(b)~~[2.] Aged, blind, or disabled individuals; and

~~(c)~~[3.] Individuals who receive supplemental security income benefits; and

~~(2)~~[(b)] Not apply to individuals;

~~4.]~~ whose Medicaid eligibility is determined:

1 (a) Using the modified adjusted gross income standard pursuant to 907 KAR
2 20:100; or

3 (b) Pursuant to 907 KAR 20:075[2. Between the ages of nineteen (19) and
4 twenty-six (26) years who formerly were in foster care and were receiving
5 Medicaid benefits at the time that they aged out of foster care.

6 (2) An individual whose Medicaid eligibility is determined using a modified ad-
7 justed gross income as the eligibility standard shall be an individual who is:

8 (a) A child under the age of nineteen (19) years, excluding children in foster
9 care;

10 (b) A caretaker relative with income up to 133 percent of the federal poverty
11 level;

12 (c) A pregnant woman, with income up to 185 percent of the federal poverty
13 level, including the postpartum period up to sixty (60) days after delivery;

14 (d) An adult under age sixty-five (65) with income up to 133 percent of the fed-
15 eral poverty level who:

16 1. Does not have a dependent child under the age of nineteen (19) years; and

17 2. Is not otherwise eligible for Medicaid benefits; or

18 (e) A targeted low income child with income up to 150 percent of the federal

19 poverty level].[Materials Incorporated by Reference. (1) Forms necessary for application

20 for benefits under the Medicaid Program are incorporated effective April 1, 1995. These

21 forms include the PA-1, revised October 1992; PA-1A, revised March 1991; PA-1C, re-

22 vised October 1991; PA-1P, revised April 1992; PA-1UP, revised May 1991; and the KIM-

23 100, revised March 1994.

1 ~~(2) These forms may be reviewed at the Department for Medicaid Services, 275 East~~
2 ~~Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may~~
3 ~~be obtained upon payment of an appropriate fee which shall not exceed approximate~~
4 ~~cost.]~~

907 KAR 20:015

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 20:015

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program provisions regarding applying for Medicaid benefits except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment replaces the reference to an obsolete agency (Department for Social Insurance) with the current agency (Department for Community Based Services); establishes that the provisions regarding applying for Medicaid benefits do not apply to individuals for whom a modified adjusted gross income is the Medicaid income eligibility standard or to individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid benefits at the time; deletes the definitions; deletes the incorporated material; and contains language and formatting revisions to comply with KRS Chapter 13A requirements. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to

185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment after comments eliminates some provisions which no longer apply; clarifies that individuals may apply for benefits via telephone; and re-words the section which establishes to which eligibility groups the provisions of this administrative regulation apply to simply refer to the other relevant administrative regulations.

- (b) The necessity of the amendment to this administrative regulation: The amendment replacing the agency title Department of Social Insurance with Department for Community Based Services is necessary to correct an obsolete reference; the amendments that establish that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals are necessary to comply with an Affordable Care Act mandate; removing the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations; deleting the incorporated material is necessary as DMS does not utilize the incorporated material; and language and formatting revisions are necessary to comply with KRS Chapter 13A standards. The amendment after comments is necessary to eliminate obsolete provisions.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards. The amendment after comments conforms to the content of the authorizing statutes by eliminating obsolete provisions.
 - (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by complying with a federal mandate and by complying KRS Chapter 13A standards. The amendment after comments will assist in the effective administration of the authorizing statutes by eliminating obsolete provisions.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
 - (4) Provide an analysis of how the entities identified in question (3) will be impacted

- by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed by the amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are exempted from the requirements will benefit from not being subject to the requirements for Medicaid eligibility purposes.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the Medicaid application provisions of this administrative regulation as some related requirements and provisions (established in another administrative regulation) will apply to this population. Those requirements are being established in a new administrative regulation – 907 KAR 20:100, Modified adjusted gross income (MAGI) Medicaid eligibility standards. DMS projects a cost of \$ as a result of exempting former foster care individuals from the requirements in this administrative regulation; however, the Department for Community Based Services (DCBS) has been purchasing health insurance for 700 of those individuals at an annual cost of \$1 million. Covering those individuals through the Medicaid program, as mandated by federal law, will procure federal matching funds at a seventy (70) percent match rate for those individuals' health care.
 - (b) On a continuing basis: The answer provided in paragraph (a) also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds of general and agency appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals as the Affordable Care Act prohibits this.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:015

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 435.906 and this administrative regulation authorize the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements in this administrative regulation nor from exempting former foster care individuals from the requirements.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the requirements in this administrative regulation nor from exempting the former foster care individuals from the requirements.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: No additional expenditures are necessary to implement this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:015

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435.906, 42 C.F.R. 435.908, Section 1413 of the Affordable Care Act, 42 U.S.C. 1396w-3(b)(3), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).
2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 435.906 mandates that a Medicaid program must "afford an individual wishing to do so the opportunity to apply for Medicaid without delay."

42 C.F.R. 435.908 requires a Medicaid program to "allow an individual or individuals of the applicant's choice to accompany, assist, and represent the applicant in the application process or a redetermination of eligibility."

42 U.S.C. 1396w-3 requires a Medicaid program to enable individuals who are eligible to apply for Medicaid or a health insurance premium subsidy through a health benefit exchange to be able to apply through the Internet.

Section 1413 of the Affordable Care Act and a bulletin issued by the Center for Medicaid and CHIP Services (CMCS) within the Centers for Medicare and Medicaid Services (CMS), dated April 30, 2013 regarding the application process for individuals applying for health insurance through the Health Insurance Marketplace or Affordable Insurance Exchange (labeled the Health Benefit Exchange in Kentucky) references mandate that individuals must be able to file an application online, by mail, over the telephone or in person. Only Medicaid individuals whose Medicaid eligibility income

standard is a modified gross adjusted income can ultimately complete the application process in any of these ways.

42 U.S.C. 1396w-3(b)(3) addresses this requirement as follows:

“The State Medicaid agency and State CHIP agency shall participate in and comply with the requirements for the system established under section 1413 of the Patient Protection and Affordable Care Act (relating to streamlined procedures for enrollment through an Exchange, Medicaid, and CHIP).”

4242 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, than federal, requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, than federal, requirements.